

THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

FORMA CONSTRUCTION COMPANY

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

NO.

**COMPLAINT FOR REFUND OF  
INTERNAL REVENUE TAXES**

COMES NOW, FORMA CONSTRUCTION COMPANY, by and through its undersigned attorneys, hereby alleges as follows:

**I. INTRODUCTION**

1. This is an action for the recovery of Internal Revenue taxes that have been erroneously, illegally, or wrongfully assessed and collected by the Internal Revenue Service (IRS) from the Plaintiff, including the unrefunded portion of the Employee Retention Credit due the plaintiff under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) for the tax period ending March 31, 2021, and certain penalties and interest on penalties related

COMPLAINT FOR REFUND OF INTERNAL REVENUE  
TAXES - 1

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1 to employment tax for the tax periods ending September 30, 2019; June 30, 2010; September  
2 30, 2020; and December 31, 2020.

3 2. Plaintiff Forma Construction Company (Forma) is a Washington Corporation  
4 headquartered in Olympia, Washington. Its Taxpayer Identification Number is XX-  
5 XXX9904.

6 3. The defendant is The United States of America.

7 **II. JURISDICTION AND VENUE**

8 4. The Court has jurisdiction over this action for a refund of income tax pursuant  
9 to the provisions of Title 28, United States Code § 1346(a)(1) and Title 26, United States Code  
10 § 7422.

11 5. Venue is proper pursuant to Title 28, United States Code § 1402(a)(1) because  
12 Plaintiff headquarters are in Olympia, Washington.

13 **III. CLAIM 1: UNREFUNDED PORTION OF EMPLOYEE RETENTION**

14 **CREDIT**

15 6. The Plaintiff seeks a refund of \$246,825.26 related to the Employee Retention  
16 Credit due the plaintiff under the Coronavirus Aid, Relief, and Economic Security Act  
17 (CARES Act) with respect to its Form 941, Employer's Quarterly Federal Tax Return, for the  
18 tax period ending March 31, 2021.

19 7. On September 29, 2021, the Plaintiff filed a formal claim for refund on Form  
20 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, for the period  
21 ending March 31, 2021. Attached as Exhibit A is a copy of the IRS Account Transcript for  
22 Plaintiff's March 31, 2021 Form 941, showing the date the claim for refund was filed.

1           8.       The Plaintiff claimed the Employee Retention Credit in the amount of  
2 \$1,283,345.00, and claimed a refund in the amount of \$1,283,345. Attached as Exhibit B is a  
3 copy of the Plaintiff's Form 941-X, claim for refund.

4           9.       The IRS processed the Plaintiff's claim and allowed a credit of \$1,036,519.74.  
5 See the entry dated January 1, 2021 showing a credit of \$1,036,519.74 on Exhibit A.

6           10.      The allowed credit of \$1,036,519.74 is \$246,825.26 less than the amount of  
7 \$1,283,345.00 to which Plaintiff is entitled.

8           11.      The IRS issued a refund to the Plaintiff on May 23, 2022. See Exhibit A.

9           12.      The IRS did not provide an explanation as to why it did not allow and refund  
10 the total amount claimed.

11          13.      The IRS did not mail, by certified mail or registered mail, a notice of the  
12 disallowance of the part of the claim to which this suit relates.

13          14.      This claim is timely under 26 U.S.C. § 6532 because it is not being filed before  
14 the expiration of 6 months from the date of filing the claim, and it is not filed after the  
15 expiration of 2 years from the date of mailing by certified mail or registered mail by the  
16 Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the  
17 suit or proceeding relates.

18 **IV.    CLAIM 2: REFUND OF IRC § 6656 FAILURE TO DEPOSIT PENALTY AND**  
19 **INTEREST – SEPTEMBER 30, 2019 FORM 941**

20          15.      Plaintiff realleges and reincorporates all facts in the preceding paragraphs 1  
21 through 14.

22          16.      Plaintiff seeks a refund in the amount of \$4,095.11 related to its payment of  
23 the failure to deposit penalty assessed under IRC § 6656.

24          17.      Plaintiff timely filed its Form 941 for the period ending September 30, 2019.  
25

1           18.     On April 20, 2020, the IRS assessed a penalty in the amount of \$48,840.33  
2     under IRC § 6656 for the failure to deposit employment taxes. Attached as Exhibit C is a copy  
3     of the IRS Account Transcript for Plaintiff's September 30, 2019 Form 941.

4           19.     On August 7, 2020, Plaintiff wrote to the IRS requesting abatement of the  
5     penalty.

6           20.     On June 1, 2022, the IRS wrote to Plaintiff stating that "We reviewed your  
7     account and are pleased to tell you that the penalty has been abated." Attached as Exhibit D  
8     is a copy of Letter LTR 168C, confirming the penalty was abated.

9           21.     However, the IRS only abated \$44,745.22 of the penalty, leaving \$4,095.11 of  
10     the penalty, to be refunded.

11          22.     The IRS did not mail, by certified mail or registered mail, a notice of the  
12     disallowance of the part of the claim to which this suit relates.

13          23.     This claim is timely under 26 U.S.C. § 6532 because it is not being filed before  
14     the expiration of 6 months from the date of filing the claim, and it is not filed after the  
15     expiration of 2 years from the date of mailing by certified mail or registered mail by the  
16     Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the  
17     suit or proceeding relates.

18     **V.     CLAIM 3: REFUND OF IRC § 6656 FAILURE TO DEPOSIT PENALTY AND**  
19                   **INTEREST – JUNE 30, 2020 FORM 941**

20          24.     Plaintiff realleges and reincorporates all facts in the preceding paragraphs 1  
21     through 23.

22          25.     Plaintiff seeks a refund in the amount of \$1,829.48 related to its payment of  
23     the failure to deposit penalty assessed under IRC § 6656.

24          26.     Plaintiff timely filed its Form 941 for the period ending June 30, 2020.  
25

1           27.     On March 15, 2021, the IRS made one assessment in the amount of \$55,550.31,  
2     and a second assessment in the amount of \$1,795.22, both under IRC § 6656 for the failure to  
3     deposit employment taxes. Attached as Exhibit E is a copy of the IRS Account Transcript for  
4     Plaintiff's June 30, 2020 Form 941.

5           28.     The IRS subsequently abated the failure to deposit penalty in the amount of  
6     \$55,550.31. See Exhibit E.

7           29.     On October 31, 2021, Plaintiff paid \$1,829.48, which was applied to the  
8     remaining failure to deposit penalty and interest on that penalty. See Exhibit E.

9           30.     On October 31, 2023, Plaintiff timely filed a formal claim for refund on Form  
10    843, Claim for Refund and Request for Abatement, in the amount of \$1,829.48. Attached as  
11    Exhibit F is a copy of the Plaintiff's complete claim for refund.

12          31.     As illustrated by the claim for refund, the Plaintiff timely deposited its  
13    employment taxes and is not liable for the penalty. See Exhibit F.

14          32.     On March 6, 2024, the IRS retaliated against Plaintiff in response to its claim  
15    for refund by asserting an additional failure to deposit penalty IRC § 6656 in the amount of  
16    \$57,345.53. Attached as Exhibit G is a copy of the IRS letter Ltr 2782C, asserting the  
17    additional penalty.

18          33.     The IRS claims in its letter that it previously abated the failure to deposit  
19    penalty in the amount of \$55,550.31 without requesting a valid Report of Tax Liability for  
20    Semiweekly Schedule Depositors, Schedule B (Form 941).

21          34.     Plaintiff included with its claim for refund a valid Schedule B plus a deposit  
22    analysis that confirmed Plaintiff made timely deposits of all tax. See Exhibit F.

23          35.     The IRS did not mail, by certified mail or registered mail, a notice of the  
24    disallowance of the part of the claim to which this suit relates.

36. This claim is timely under 26 U.S.C. § 6532 because it is not being filed before the expiration of 6 months from the date of filing the claim, and it is not filed after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

**VI. CLAIM 4: REFUND OF IRC § 6656 FAILURE TO DEPOSIT PENALTY AND INTEREST – SEPTEMBER 30, 2020 FORM 941**

Plaintiff realleges and reincorporates all facts in the preceding paragraphs 1 through 36.

37. Plaintiff seeks a refund in the amount of \$60,773.69 related to its payment of the failure to deposit penalty assessed under IRC § 6656.

38. Plaintiff timely filed its Form 941 for the period ending September 30, 2020.

39. On June 21, 2021, the IRS made an assessment in the amount of \$60,117.92 under IRC § 6656 for the failure to deposit employment taxes. Attached as Exhibit H is a copy of the IRS Account Transcript for Plaintiff's September 30, 2020 Form 941.

40. On October 31, 2021, Plaintiff paid \$60,773.69, which was applied to the failure to deposit penalty and interest on that penalty. See Exhibit H.

41. On October 31, 2023, Plaintiff timely filed a formal claim for refund on Form 843, Claim for Refund and Request for Abatement, in the amount of \$60,773.69. Attached as Exhibit I is a copy of the Plaintiff's complete claim for refund.

42. As illustrated by the claim for refund, the Plaintiff timely deposited its employment taxes and is not liable for the penalty. See Exhibit I.

43. On December 11, 2023, the IRS responded to Plaintiff's claim for refund requesting that taxpayer submit a "current/valid ROFTL before the FTD penalty can be assessed for abatement." Attached as Exhibit J is a copy of the IRS letter Ltr 2782C.

44. The acronym ROFTL stands for Report of Federal Tax Liability, which refers to the Schedule B (Form 941).

45. Plaintiff included with its claim for refund a valid Schedule B plus a deposit analysis that confirmed Plaintiff made timely deposits of all tax. See Exhibit I.

46. The IRS did not mail, by certified mail or registered mail, a notice of the disallowance of the part of the claim to which this suit relates.

47. This claim is timely under 26 U.S.C. § 6532 because it is not being filed before the expiration of 6 months from the date of filing the claim, and it is not filed after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

**VII. CLAIM 5: REFUND OF IRC § 6656 FAILURE TO DEPOSIT PENALTY AND INTEREST – DECEMBER 30, 2020 FORM 941**

48. Plaintiff realleges and reincorporates all facts in the preceding paragraphs 1 through 48.

49. Plaintiff seeks a refund in the amount of \$1,721.22 related to its payment of the failure to deposit penalty assessed under IRC § 6656.

50. Plaintiff timely filed its Form 941 for the period ending December 31, 2020.

51. On August 23, 2021, the IRS made an assessment in the amount of \$1,711.49 under IRC § 6656 for the failure to deposit employment taxes. Attached as Exhibit K is a copy of the IRS Account Transcript for Plaintiff's December 31, 2020 Form 941.

1           52.     On October 31, 2021, Plaintiff paid \$1,721.22, which was applied to the failure  
2 to deposit penalty and interest on that penalty. See Exhibit K.

3           53.     On October 31, 2023, Plaintiff timely filed a formal claim for refund on Form  
4 843, Claim for Refund and Request for Abatement, in the amount of \$1,721.22. Attached as  
5 Exhibit L is a copy of the Plaintiff's complete claim for refund.

6           54.     As illustrated by the claim for refund, the Plaintiff timely deposited its  
7 employment taxes and is not liable for the penalty. See Exhibit L.

8           55.     The IRS has not responded to Plaintiff's claim for refund, thus the IRS did not  
9 mail, by certified mail or registered mail, a notice of the disallowance of the part of the claim  
10 to which this suit relates.

11           56.     This claim is timely under 26 U.S.C. § 6532 because it is not being filed before  
12 the expiration of 6 months from the date of filing the claim, and it is not filed after the  
13 expiration of 2 years from the date of mailing by certified mail or registered mail by the  
14 Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the  
15 suit or proceeding relates.

16                               **VIII. JURY DEMAND**

17           57.     Plaintiff requests a jury for all claims so triable.

18                               **IX. REQUEST FOR RELIEF**

19           WHEREFORE, Plaintiff prays that judgment be entered in its favor as follows:

20           a.     For a refund in the amount of \$315,244.76, together with interest as provided  
21 by law;

22           b.     For reasonable attorneys' fees and costs;

23           c.     For such other relief as the court deems just and proper.

24           //



1 DATED this 23<sup>rd</sup> day of May 2024.

2  
3 **HELSELL FETTERMAN LLP**

4  
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